

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 STEVEN V. ADLER
Supervising Deputy Attorney General
3 DOUGLAS LEE, State Bar No. 222806
Deputy Attorney General
4 California Department of Justice
110 West "A" Street, Suite 1100
5 San Diego, CA 92101

6 P.O. Box 85266
San Diego, CA 92186-5266
7 Telephone: (619) 645-2580
Facsimile: (619) 645-2061

8 Attorneys for Complainant

9
10 **BEFORE THE**
RESPIRATORY CARE BOARD
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. R-2108

13 JAMES BERRY
14 P.O. Box 9256
Cedarpines Park, CA 92322

A C C U S A T I O N

15 Respiratory Care Practitioner License No. 3230

16 Respondent.
17

18 Complainant alleges:

19 PARTIES

20 1. Stephanie Nunez (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Respiratory Care Board of California,
22 Department of Consumer Affairs.

23 2. On or about May 31, 1985, the Respiratory Care Board issued Respiratory
24 Care Practitioner License No. 3230 to JAMES BERRY (Respondent). The Respiratory Care
25 Practitioner License was in full force and effect at all times relevant to the charges brought herein
26 and will expire on October 31, 2008, unless renewed.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

6. Section 3750 of the Code states, in pertinent part:

“ ”
....

“ ”
...

“ ”
....

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within

1 the meaning of this article. The board shall order the license suspended or revoked, or
2 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
3 conviction has been affirmed on appeal or when an order granting probation is made
4 suspending the imposition of sentence, irrespective of a subsequent order under Section
5 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
6 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
7 accusation, information, or indictment.”

8 8. California Code of Regulations, title 16, section 1399.370, states:

9 “For the purposes of denial, suspension, or revocation of a license, a crime or act
10 shall be considered to be substantially related to the qualifications, functions or duties of
11 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
12 perform the functions authorized by his or her license or in a manner inconsistent with the
13 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
14 those involving the following:

15 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
16 abetting the violation of or conspiring to violate any provision or term of the Act.

17 “....”

18 “(c) Conviction of a crime involving driving under the influence or reckless
19 driving while under the influence.

20 “....”

21 COST RECOVERY

22 9. Section 3753.5, subdivision (a) of the Code states:

23 "In any order issued in resolution of a disciplinary proceeding before the board,
24 the board or the administrative law judge may direct any practitioner or applicant found to have
25 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
26 investigation and prosecution of the case."

27 ///

28 ///

1 10. Section 3753.7 of the Code states:

2 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
3 include attorney general or other prosecuting attorney fees, expert witness fees, and other
4 administrative, filing, and service fees."

5 11. Section 3753.1 of the Code states:

6 "(a) An administrative disciplinary decision imposing terms of probation may
7 include, among other things, a requirement that the licensee-probationer pay the monetary costs
8 associated with monitoring the probation. "

9 CAUSE FOR DISCIPLINE

10 (Conviction of a Crime)

11 12. Respondent is subject to disciplinary action under Code sections 3750,
12 subdivisions (d) and (g), and 3752, in that he was convicted of a crime substantially related to the
13 qualifications, functions, or duties of a respiratory care practitioner. The circumstances are as
14 follows:

15 A. On or about March 1, 2005, at approximately 4:55 p.m.,
16 Respondent was involved in a traffic collision in San Bernardino County.
17 Respondent attempted to drive around stopped vehicles in his lane and collided
18 with another vehicle. Police officers responded to the scene. Respondent told
19 officers he had three beers. Respondent was unable to perform the Standard Field
20 Sobriety Tests. Blood alcohol test taken that evening revealed Respondent had a
21 Blood Alcohol Content of .172 and .142.

22 B. On or about November 6, 2006, in the case of *The People*
23 *of the State of California v. James Berry*, case number TCF044968, before the
24 Superior Court of California, County of San Bernardino, Respondent pled guilty,
25 pursuant to a plea bargain, of violating Vehicle Code section 23103.5 [wet
26 reckless]. As a result of the conviction, Respondent was placed on three years
27 probation with terms and conditions.

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8

10

11
1213
14

15
16
17

18

20

22
23
24
25